

REMARKS/ARGUMENTS

Claims 1, 6-8, 17 and 18 are rejected under 35 U.S.C. §112(b) as anticipated by the patent application of Au-Yeung (US 2001/0040345). Claims 2-4, 9, 20 and 21 have been rejected under 35 U.S.C. §103(a) as being unpatentable over the Au-Yeung patent application. Claims 5 and 19 stand rejected under §103(a) as unpatentable over the Au-Yeung patent application and further in view of the patent to Wirth (US 5,845,906). Claims 10-15 and 22-29 have been rejected under §103(a) as unpatentable over the Au-Yeung patent application and further in view of the patent to Moody (US 5,489,101). Lastly, Claim 16 is rejected under §103(a) as unpatentable over the Au-Yeung patent application in view of the patent to Malcolm (US 5,794,934).

Independent Claims 1 and 22 have been amended to emphasize and clarify patentable features of the present invention. New independent Claims 30 and 31 have been added to define further inventive aspects. Original dependent Claims 2-4 have been cancelled. Re-consideration of the rejection of Claims 1 and 5-29, together with consideration of new Claims 30-32, is respectfully requested.

The present invention is directed to a card game using one or two community cards that can be used by the players and dealer in arriving at a best hand. Preferably, the card game is poker and the best hand is arrived at using five cards. One or more inventive aspects can make up various embodiments of the inventive card game. In one embodiment having only one community card, the players decide on their own whether or not to substitute the single community card for one of the cards dealt to each of the players. In one embodiment having only two community cards, these two community cards are dealt face up and five cards are dealt face down to each of the players and the

dealer. The prior art is deficient in teaching or motivating one of ordinary skill so as to arrive at these inventions.

The Au-Yeung patent application discloses a poker game using an initially dealt three community cards and a later dealt two community cards, when there is a “call” bet. All community cards are dealt face up. Each player is also dealt two cards face down. The winning hand having five cards is determined using the five face up community cards and the two face down cards. In that respect, the player selects from the seven cards these five cards that are to constitute his/her best hand.

The patent to Moody describes a poker game in which five cards are dealt to each player and six community cards are dealt face down and are arranged in a predetermined pattern. Each player decides whether or not to use between one and five of the community cards. If so used, the community cards used to replace discarded cards are predetermined based on how many cards were discarded by the player. With respect to betting, in one embodiment, a portion (predetermined percentage or predetermined amount) of each bet made by the player is allocated to a progressive jackpot.

The patent to Wirth concerns a poker game in which five cards are dealt face down to each player. A sixth card is also dealt face down to each player. Each player can decide whether or not to use his/her own sixth card. If so, the player discards one of the five cards that were dealt to him/her. With respect to betting, the player makes an ante wager and a wager to cover the cost of the sixth card. A player who continues play also places a wager in a common zone.

The patent to Malcolm relates to a poker game in which five cards are dealt face down to each player and two community cards are also dealt face down. Regarding wagering, first and second wagers are made before dealing the cards to the players and the community cards. Each player decides whether to play five cards only (first phase) or to also play with seven cards (second phase). If the second phase is played, the player makes a third wager and, subsequent to that, the two community cards are turned face up. The second phase players compare their seven card combined hands to determine which player has the best seven card hand.

With reference to independent Claim 1, key patentable distinctions are set out therein. Claim 1 calls for, among other things, dealing by a dealer one community card that is face up. This one community card is the only community card dealt during the playing of the card game. In contrast, the Au-Yeung patent application teaches and requires several community cards, not a single community card. More specifically, the Au-Yeung patent application discloses the dealing of an initial three community cards and then a subsequent dealing of two additional community cards, for a total of five community cards. Such a large number of community cards is consistent with the type of poker game disclosed in this patent application. That is, the poker game of the Au-Yeung patent application is comparable to the well-known and popular poker game identified as “Texas Hold em.” Contrastingly, Applicants’ game, as defined by Claim 1, is not a “Texas Hold em” poker game. Hence, its method of play is strikingly different, particularly related to the requirement of the single community card.

Claim 1 also calls for deciding by the first player, at least after the one community card is dealt face up, whether or not to continue to play. If so, determining by the first player whether or not

to discard one of the number of cards dealt to the first player. If discarded, the one community card is used as a replacement card. In contradistinction, the Au-Yeung poker game does not include any determination by a player to discard only one card that can be replaced by the single community card. Instead, according to the play of the Au-Yeung poker game, the best five cards are selected from the five community cards and the two cards dealt face down (see [0019]). That is, not only is there more than one community card used in determining the best hand, there is no discarding of any card.

Likewise, the other prior art references are meaningfully deficient in disclosing, or otherwise teaching/motivating, one of ordinary skill to arrive at Applicants' invention. In particular, the Moody patent requires six community cards that are dealt face down. The Wirth patent requires five cards dealt face down and a sixth card is also dealt face down to each player. Totally contrary to the playing of the Wirth game, the present invention requires a single community card that is dealt face up, not individual sixth cards dealt face down to each player. Furthermore, Claim 1 requires that the player decide, after the single community card is dealt face up, whether or not to continue to play and whether or not to discard, unlike the Wirth game in which the player makes a decision whether or not to discard while the sixth card is face down. The poker game of the Malcolm patent requires two community cards that are dealt face down. Dissimilarly, Claim 1 requires only one community card that is dealt face up. Additionally, in connection with playing the "second phase", there is no deciding by the player whether or not to discard one card, as required by Claim 1.

In paragraph no. 4 of the Office Action, the Examiner states that: "it [is] well known in the art that if only one community card is dealt face up at the time the player decides whether or not to continue, this favors the house... determining exactly how many community cards and dealt cards

are to be dealt face up (e.g. one card, two cards, three cards, etc.) at the time the player decides whether or not to continue to play would have been an obvious casino business decision...” Applicants respectfully disagree that one community card favors the house since the player has known information based on the community card being dealt face up. Depending on the rank of the known community card, the player may use an optimum strategy in deciding whether or not to continue play. Relatedly, the house typically uses the amounts of the pay outs to control its return (profits). Accordingly, the house can, if it is in the best business interest of the house, change the pay outs set out in the “ante/bet payout table,” for example, so that the odds dictate a greater house return. Moreover and significantly, Claim 1 requires that only one community card be dealt face up during the playing of the game, not merely one community card being dealt face up at the time the player decides whether or not to continue play. None of the prior art suggests this patentable limitation. Based on these considerations and reasoning, together with the patentable aspects discussed in differentiating the prior art, Applicants’ invention is also not obvious based on such prior art including the Au-Yeung patent application.

Claims 5-21 depend, either directly or indirectly from amended Claim 1. At least for the patentable grounds set forth in the discussion of Claim 1, these dependent claims should now be found allowable.

Claim 22 is a method claim that recites the providing of at least three wagering areas including for making an ante wager, a bet wager and a community card wager. Importantly, the player decides on his or her own whether or not to make the community card wager. Significantly as well, the player is also involved in deciding the amount of the community card wager.

The Examiner recognizes that the Au-Yeung patent application lacks any teaching or suggestion related to a community card wager. Reliance is placed on the contents of the Moody patent, which does disclose use of a progressive jackpot to attempt to overcome this failing. However, the teachings and motivations found in this patent are substantially different from the patentable requirements of amended Claim 22. More particularly, the amount to be included in the Moody jackpot is established by the house, not the player. According to the Moody patent, a portion, such as a predetermined percentage or a predetermined amount, of the player's bet is allocated to the jackpot. Consequently, the player does not have the option to decide whether or not to contribute to the progressive jackpot, nor is the player able to decide the amount of any such contribution. In contrast, Claim 22 requires that the player himself/herself decides whether or not to make the community card wager. Furthermore, the community card wager is not a predetermined percentage or a predetermined amount based on a player's bet. Instead, it can be an amount not based on a player's other wager(s), e.g. the community card wager can be made without making an ante wager and/or a bet wager. As stated in the claim, the player decides, independently of any other wager, both whether or not to make a community card wager and the amount of such wager.

If the rejection of Claim 22, as now amended, should be continued, it is respectfully requested that it be pointed out with specificity how each and every patentable feature is taught or suggested by the prior art including the Moody patent. In the absence of a prima facie showing to that effect, Claim 22 should be allowed.

Dependent Claims 23-29 depend, either directly or indirectly from amended Claim 22. For at least the reasons established in showing the patentability of Claim 22, these claims should also be allowed.

Claim 30 is a new method claim that is similar in respects to original, dependent Claim 11 (including all limitations from those claims from which it depended), but also adds claim language that more clearly differentiates the prior art. In rejecting original Claim 11, the Examiner relied on the contents of the Moody patent. According to the Moody patent, a player can be paid from the progressive jackpot based on predetermined cards that the player holds. However, the player must place a bet wager in order to qualify for a possible progressive jackpot payout. This is completely opposite from the patentable requirements of Claim 30. Claim 30 calls for making determinations including paying the first player a predetermined amount when the first player makes at least one of the ante wager and the bet wager and a first community card is a predetermined card and also paying the first player the predetermined amount when the first player does not make any wager (other than the community card wager) and the first community card is the predetermined card. Thus, based on the method of play of Claim 30, the player need not make ante or bet wagers (or any other wager) in order to be able to receive a pay out for the player's community card wager. Stated another way, the player playing the card game of Claim 30 is able to possibly collect on a community card wager without making one or more other wagers. This is directly opposite to the teaching of the Moody patent, which requires not only that a bet wager be made but also that the progressive jackpot bet be a portion of the bet wager.

Applicants respectfully request consideration and allowance of Claim 30, in light of this combination of features that are not found in the prior art including the Moody patent.

Claim 31 is the only other independent claim. This method claim is directed to a card game that requires only two community cards that are dealt face up. Additionally, five cards are dealt face down to at least the first player. Like the patentable limitation related to the community card number pointed out in the discussion of Claim 1, none of the prior art teaches or suggests the patentable limitation of only two community cards that are dealt face up. As previously established, the Au-Yeung patent application is directed to a "Texas Hold em" poker game in which there are five community cards and not two community cards with five cards dealt face down, as found in the invention of Claim 31. Based on this combination of patentable aspects, consideration and allowance of Claim 31 should be made.

Claim 32 is a dependent claim that depends from Claim 31 and, at least for the reasons presented for the allowance of Claim 31, Claim 32 should be allowed.

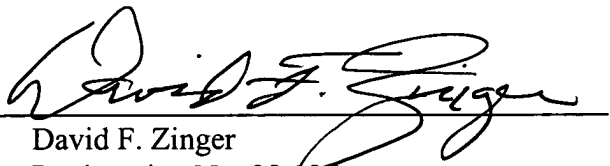


*Application No. 10/817,011*

Based upon the foregoing, Applicants believe that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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